

OVERPAYMENTS RESULTING FROM
RETROACTIVE APPLICATION OF P. L. 201

CONFIDENTIAL

Chronology of Pertinent Documents

1. 19 October 1951

Memorandum from Deputy Director (Administration) approved by Director of Central Intelligence, authorizing adoption of new pay scales as of the effective date of approval of S.622 (enacted as P. L. 201).

2. 24 October 1951

Approval of Public Law 201 amending the Classification Act of 1949 and establishing higher pay rates for Classification Act schedules effective upon the beginning of the first pay period after 30 June 1951. (For most agencies, including CIA, this date was 8 July 1951.)

3. 6 November 1951

CG Decision B-106337 (31 CG 166) holding that promotion actions taken between the effective date of P. L. 201 (8 July 1951) and its enactment date (24 October 1951) must be adjusted if retroactive application of the new scales would have required use of a lower salary rate at the time of the action.

6 November 1951

CIA Notice [REDACTED] Subject: Increase in Basic Rates of Compensation. Announced to Agency employees that they were not covered by P. L. 201 but that the Director had administratively approved adoption of new scales. States that Agency employees are not eligible for retroactive payments authorized by P. L. 201.

25X1A

(Salary adjustments based on new scales were independently noted on official records by Personnel Office and Comptroller's Office. No personnel actions were prepared.)

13 November 1951

Letter from Director of Central Intelligence to Comptroller General requesting opinion as to use of P. L. 110 authority to make retroactive payments.

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6. 3 December 1951

CIA Notice [REDACTED] Subject: Retroactive Salary Increase for Service in Other Agencies. Advised eligible employees that previous employing agency was responsible; established procedure for handling cases.

25X1A

7. 21 November 1951

CG Decision B-106516 (31 CG 191) holding that DCI does not have the authority to pay retroactive salary increases.

8. 6 March 1952

CIA Notice [REDACTED] Subject: Application of the Agency Pay Increase of 24 October 1951 to Contract Personnel. Provided that contract employees were eligible for salary adjustments in accordance with new scales. Established procedures for handling such cases.

25X1A

9. 5 June 1952

Approval of P. L. 375 - 82nd Congress authorizing retroactive payments (by CIA) "on the same basis" as P. L. 201.

(Computation of retroactive payments was performed by Comptroller's Office and checks issued immediately upon approval of P. L. 375)

10. 27 August 1952

Memorandum from Chief, Classification and Wage Division, to Personnel Director, recommending review to determine possible overpayments based on 31 CG 166(Att. 3) for forwarding proposed memorandum to Chiefs, Personnel Divisions, (Overt) and (Covert).

11. 2 September 1952

Memorandum to Personnel Director from Acting Chief, Research and Planning Staff, recommending approval of proposed memorandum to PDO and PDC based on opinion that 31 CG 166 was applicable.

12. 5 September 1952

Memorandum dispatched to Chiefs, PDO and PDC from Personnel Director requesting check of actions involving possible overpayments. Copies of this memorandum were noted for Chiefs, Fiscal and Finance Division.

24 September 1952

Message to [REDACTED] RPS, from [REDACTED] Following discussion with Mr. [REDACTED] RPS would prepare inquiry to General Counsel as to applicability of decision 31 CG 166.

25X1A

18 December 1952 Proposed inquiry to General Counsel forwarded to OFD.

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25X1A

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(Upon receipt of this memorandum, a preliminary survey showed the existence of several possible cases. Study was undertaken to explore possible basis for favorable decision to avoid seeking refunds from these employees.)

13. 12 January 1953

Memorandum from Personnel Director to General Counsel requesting review of pertinent decisions and opinion as to Agency requirement in making adjustment. (Preparation of memo had been coordinated with Deputy Comptroller by Research and Planning Staff.)

14. 2 February 1953

Memorandum to Personnel Director from Office of General Counsel - holding that 31 CG 166 "should mandatorily be adhered to by this Agency in making retroactive payments pursuant to the general provisions of Public Law 375 - 82nd Congress.

15. 24 February 1953

Memorandum from Personnel Director to Chiefs, PDO and PDC, advising of General Counsel's opinion requiring adjustments and requesting full check by 4 March 1953 of personnel records for possible cases.

(This check had been discussed with Fiscal Division and it was agreed that it would be simpler to complete from Personnel Office records.)

16. 25 March 1953

Memorandum from Personnel Director to Comptroller, forwarding names of individuals on vouchered rolls who appeared affected and requesting that his office contact the individuals to make necessary adjustments.

(Personnel Actions effecting adjusted rate on a current basis have been issued in cases presently indicated. Complete check of un-vouchered action has been delayed due to time required to obtain files on loan to operating offices.)

- 3 -

CONFIDENTIAL

4 March 1953 Received initial listing from PDO.
5 March 1953 Received progress report from PDO.
11 March 1953 Received additional listing from PDO.
19 or 20 March 1953 Received listing of vouchered employees affected from PDO.

(Although [REDACTED] indicates unvouchered names had been furnished them, [REDACTED] never seen their list.)

1 April 1953 [REDACTED] attended meeting with Comptroller's representatives to discuss procedure for effecting adjustments and notifying employees affected.

9 April 1953 [REDACTED] attending meeting with Comptroller's representatives to discuss preparation of reply to DD/A on circumstances requiring adjustments and explanation of delay.

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19 October 1951

MEMORANDUM FOR: THE DIRECTOR

SUBJECT: Proposed Amendments to the
Classification Act of 1949

The conferees of the two Houses of Congress have rendered a report on the amendment of the House to the bill (S. 622), to increase basic rates of compensation for certain employees of the Federal Government. The proposed bill would make amendments to the Classification Act of 1949. In addition to the increases in the compensation schedules, the proposed bill would establish retroactively an effective date for the increases.

It would be in accord with the present policy of this Agency as set forth in CIA Regulation [REDACTED] to adopt the provisions of the proposed amendments to the Classification Act. Therefore, it is recommended that you approve application, in so far as possible, of the provisions of S. 622, as it may be finally approved and become law, to all employees of the Agency whose compensation is fixed in accordance with the compensation schedules of the Classification Act of 1949, including the effective date which may be established.

STATINTL

WALTER R. WOLF
Deputy Director
(Administration)

Concurrences:

_____/s/
(General Counsel)

_____/s/
(Personnel)

APPROVED:

_____/s/
(Comptroller)

WALTER B. SMITH
Director of Central
Intelligence

OGC/JSW:mw

Distribution:

Orig & 2 - Comptroller

1 - OGC

2 - Signer
1 - AD/Personnel
1 - Administrative File 1 - DD/A

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PUBLIC LAW 201 - 82nd CONGRESS

Approved October 24, 1951
Effective as of the first day of the first pay period which began
after June 30, 1951

"To increase the basic rates of compensation of certain officers and
employees of the Federal Government, and for other purposes."

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EMPLOYEES OVERPAID BETWEEN 8 JULY AND 24 OCTOBER 1951

STATINTL

VOUCHERED PAYROLL	Net Amount	How To Be Adjusted
1.	\$20.17	Full amount to be deducted from 9 May check
2.	17.38	RESIGNED
3.	2.48	Full amount to be deducted from 9 May check
*4.	15.45	Full amount to be deducted from 9 May check
5.	26.13	Full amount to be adjusted in 9 May check; as a result of deductions from 25 April check, employee does not owe full amount.
6.	2.35	Full amount to be adjusted in 9 May check
7.	2.09	Double deduction was taken from 25 April check with result that Agency owes refund to be included in 9 May check. Employee has been on sick leave and not contacted personally. However, Admin. Officer, OCD, has been advised so explanation can be made as soon as possible.
8.	26.88	Amount to be deducted in equal installments from next four checks
*9.	12.94	Full amount to be deducted from 9 May check
10.	5.62	Full amount to be deducted from 9 May check
11.	8.86	Full amount to be deducted from 9 May check
12.	32.05	RESIGNED
*13.	12.79	Paid by personal check 24 April
14.	16.66	Amount to be deducted in equal installments from next two checks
*15.	16.30	Full amount to be deducted from 9 May check. As a result of double deductions from 25 April check, employee does not owe full amount
*16.	19.42	Will pay by personal check during May
17.	31.38	RESIGNED
18.	23.69	Full amount to be deducted from 9 May check
19.	9.00	As a result of double deductions from 25 April check, employee does not owe full amount.
20.	12.40	RESIGNED
21.	21.47	Full amount to be deducted from 9 May check
22.	2.39	Full amount to be deducted from 9 May check
23.	16.13	Full amount to be deducted from 9 May check
*24.	15.82	Full amount to be deducted from 9 May check; as a result of double deductions from 25 April check, employee does not owe full amount.
UN		
1.	9.60	
2.	23.50	Overseas
3.	20.16	
4.	20.29	Overseas
5.	12.09	Resigned
6.	19.97	Resigned
7.	23.85	Overseas

* Present at meeting 1123 Eye Bldg., 25 April

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Washington, D. C.

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STATINTL

NOTICE

NO. [REDACTED]

6 November 1951

SUBJECT: Increase in Basic Rates of Compensation

1. On 24 October 1951 the President approved an amendment to the Classification Act (Public Law 201, 82d Congress) which provides for increases in the basic rates of compensation of certain officers and employees of the Federal Government effective on 8 July 1951. Salary increases will be granted ranging from \$300 to \$800 in accordance with the schedule of increases approved in that law for classified employees of the Agency. These increases do not apply to ungraded employees. The increases will be effective as of 24 October 1951, but for administrative reasons the salary checks to be delivered on 23 November 1951 will reflect increases for the pay period beginning 28 October 1951. The increases for the intervening days will be adjusted at a later date.

2. However, the General Accounting Office has informally advised that since CIA and certain other agencies are exempted from the provisions of the Classification Act, the legal authority of these agencies to pay the retroactive portion of the pay increases for the period 8 July 1951 through 23 October 1951 is in question.

3. In the belief that the Agency has the necessary authority, we are strongly asserting the right to make the retroactive payments and are asking for decision by the Comptroller General at the earliest opportunity. When it is received, an appropriate notice will be issued.

/s/

WALTER B. SMITH
Director

Distribution: No. 5

NAME

DATE & TYPE OF ACTION

ADJUSTMENT REQUIRED TO

STATINTL

19 Aug 51-Promotion
GS-5 \$3475. to GS-6 \$3700. (Adjusted to \$4045) GS-6 \$3920.

17 Aug 52-PSI
GS-6 \$4045 to \$4170 (Should be \$3920 to \$4045)

19 Aug 51-Promotion
GS-5 \$3475. to GS-6 \$3700. (Adjusted to \$4045) GS-6 \$3920.

16 Mar 52-Promotion
GS-6 \$4045. to GS-7 \$4205. (Should be GS-6 \$3920. to GS-7 \$4205.)

19 Aug 51-Promotion
GS-4 \$3275. to GS-5 \$3475. (Adjusted to \$3785) GS-5 \$3660.

17 Aug 52-PSI
GS-5 \$3785. to GS-5 \$3910 (Should be \$3660 to \$3785.)

16 Sep 51-Promotion
GS-5 \$3350. to GS-6 \$3575 (Adjusted to \$3920) GS-6 \$3795.

14 Sep 52-PSI
\$3920. to \$4045 (Should be \$3795 to \$3920) Resigned 16 Jan 1953

22 Jul 51-Promotion
GS-5 \$3725. to GS-7 \$3950. (Adjusted to \$4330) GS-7 \$4205.

11 Feb 52-Promotion
GS-7 \$4330. to GS-9 \$5060 (Should be \$4205 to \$5060)

22 Jul 51-Promotion
GS-5 \$3850. to GS-6 \$4075 (Adjusted to \$4420) GS-6 \$4295.

11 Nov 51-Promotion
GS-6 \$4420. to GS-7 \$4580 (Should be GS-6 \$4295. to GS-7 \$4455.)

9 Nov 52-PSI
GS-7 \$4580 to \$4705 (Should be GS-7 \$4455 to \$4580)

16 Sep 51-Promotion
GS-5 \$3350 to GS-6 \$3575 (Adjusted to \$3920) GS-6 \$3795

STATINTL

NAME

DATE & TYPE OF ACTION

ADJUSTMENT REQUIRED

14 Sep 52-PSI

GS-6 \$3920 to GS-6 \$4045 (Should be \$3795 to \$3920)

15 Feb 53-Promotion

GS-6 \$4045 to GS-7 \$4205. (Should be GS-6 \$3920. to GS-7 \$4205.)

8/5/51 - Promotion

GS-5 \$3350 to GS-6 \$3575

GS-6 ~~\$3795.~~
3920

6 Jan 52 - Resingation

GS-6 \$3920

(Should have been \$3795)

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STATINTL

NOTICE
[REDACTED]

3 December 1951

SUBJECT: Retroactive Salary Increase for Service in Other Agencies

1. CIA employees who were employed by other U. S. Government agencies in positions under the Federal Classification Act during the period 8 July - 23 October 1951, and who were U. S. Government employees on 24 October 1951, are entitled to retroactive pay increases for such service. Pay adjustments are the responsibility of the employing agency during the period specified above.

2. a. Requirements for determination of eligibility for retroactive pay increases under circumstances indicated above include:

(1) Certification that the individual concerned was employed by the United States Government on 24 October 1951.

(2) Current address of the individual concerned.

b. The CIA Personnel Office is charged with furnishing the information indicated in paragraph 2a above to other Federal agencies in the case of each CIA employee eligible for retroactive increase payments from such agencies. Eligible individuals should contact [REDACTED] Jr., Room 113, North Building, telephone extension [REDACTED] salary claim action.

STATINTL

/s/

WALTER REID WOLF
Deputy Director
(Administration)

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CENTRAL INTELLIGENCE AGENCY
Washington, D. C.

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NOTICE

6 March 1952

SUBJECT: Application of the Agency Pay Increase of 24 October 1951
to Contract Personnel.

1. Although CIA is specifically exempted from the provisions of the Classification Act of 1949, the Director, as a matter of policy, has directed that the Agency adhere to the provisions of the Act insofar as possible. The recent legislative pay increase (P.L. 201) is an amendment to the Classification Act of 1949 and, as such, does not apply to CIA personnel. However, in accordance with previous policy, the Director approved similar increases for Agency employees effective 24 October 1951.

2. This is not necessarily true of persons engaged under contract by CIA. Many, if not most, of such persons are not employees but are independent contractors. Further, the services being rendered have not been classified in accordance with the Classification Act of 1949 as to appropriate grade level. The salaries being paid are negotiated salaries and, in many instances, would be at variance with those prescribed for the positions had they been classified on a strict functional basis. Further, the qualifications of the incumbents are frequently not appraisable in terms of the purely functional requirements of the positions.

3. It is recognized, however, that certain persons engaged under contract may in fact be employees of CIA, may have been engaged at salary levels comparable to those at which the positions would have been classified, and, lastly, that the incumbents may be qualified to hold the positions. If such conditions prevail, it has been determined that these persons should receive the benefits of the pay increase authorized for appointed employees.

4. To secure this benefit for certain contract personnel, it will be necessary to do the following:

a. Establish the fact that the individual is in fact an employee of CIA. This is a matter of actual relationship and not contractual terminology.

b. Establish the GS grade level of the position in accordance with the standards of the Agency.

-1-

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c. Establish the fact that the individual is qualified to hold the position as classified.

d. Ensure that none of the provisions of the present contract are inconsistent with the established employee relationship.

5. All Offices or Staffs which believe that certain of their contract personnel qualify as contract employees eligible for the authorized pay increase should submit a revision for the review and classification of specific contract positions. The review and necessary determinations and revisions of contracts will be made by the Special Contracting Officer, Administrative Staff (Special) and designated representatives of the Personnel Office/CIA and the Operating Office concerned. In addition to making the basic determinations, these officials shall determine the effective date of the application of the pay increase which, however, shall be not earlier than that authorized for appointed employees.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

/s/

WALTER REID WOLF
Deputy Director
(Administration)

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Public Law 375 - 82nd Congress

Approved June 5, 1952

Chapter XI. Increased Pay Costs

General Provision

"Appropriations or other funds made available by this or any other Act for personal services during the fiscal year 1952 shall be available for pay increases, comparable to those provided by Public Law 201, approved October 24, 1951, granted by administrative action pursuant to law: Provided, That such pay increases may be made retroactively effective on the same basis as if they had been authorized by said law:"

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STANDARD FORM NO. 64 C O P Y

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Office Memorandum • UNITED STATES GOVERNMENT

TO : Personnel Director

DATE: 27 August 1952

FROM : Classification and Wage Division

SUBJECT: Possible Over-Payment of Personnel as a Result of Application of Public Law 201

The Classification and Wage Division has recently reviewed the Comptroller General's Decision (B-106337) concerning possible over-payments to personnel as a result of the application of Public Law 201

As a result of our study, we believe that the action, on the part of the Personnel Division (Overt) and Personnel Division (Covert), outlined in the attached memorandum is necessary in order to insure that Agency personnel actions are in accord with the intent of Public Law 201.

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Personnel Director

2 September 1952

Acting Chief, RPS

Salary Adjustments Resulting from Retroactive Pay Increase

1. Public Law 375, 82 Congress, provides (Chapter XI) "Appropriations or other funds made available by this or any other Act for personal services during the fiscal year 1952 shall be available for pay increases, comparable to those provided by Public Law 201 approved October 24, 1951, granted by administrative act pursuant to law: Provided, that such pay increases may be made retroactive effective on the same basis as if that had been authorized by said Public Law". This has the effect of making adjustments under Public Law 375 subject to the same conditions as those applicable to increases under Public Law 201. The Comptroller General's Decision E-106337 therefore applies to these adjustments and such cases processed in Central Intelligence Agency will require amendment accordingly.

2. It is recommended that PDO and PDC be instructed to make the check of promotion actions suggested in the proposed memorandum.

STATINTL

RPS/BHB:nh (2 September 1952)

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C O P Y

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5 September 1952

Chief, Personnel Division (O)
Chief, Personnel Division (C)
Personnel Director

Possible Over-Payment of Personnel as a Result of Application of Public Law 201

REFERENCE: Comptroller General's Decision (B-106337) dated 6 November 1951.

1. The retroactive provision of Public Law 201 has the effect of requiring the adjustment of an employee's compensation for the period between the effective date (8 July 1951 for Administrative purposes) and enactment date to reflect the pay status each employee would have attained had the amended pay schedules been operative and applied at the beginning of the first pay period after 30 June 1951.

2. Accordingly, an individual who was promoted between 8 July 1951, and the enactment date of the law, 25 October 1951, is entitled to receive basic compensation at the lowest rate of such higher grade which exceeds his existing rate of basic compensation by not less than one step increase of the grade from which he is promoted or transferred, computed on the basis of the revised pay scales set by Public Law 201. Under conditions set forth in paragraph 3 following, if pay rates for promotion were computed on the basis of the "old" pay schedule authorized by the Classification Act of 1949, and then the increase for the step in the new grade applied to the old rate, a higher rate would have been paid than was proper. This situation is further illustrated in Question 7 of above reference decision which is quoted below:

Problem: "7. In August 1951, an employee in grade GS-5 receiving \$3350, the third step-rate, was promoted to GS-6. To meet the requirement of section 802(b) of the Classification Act of 1949, as amended, and the Commission's regulations (section 25.104(a)) that he must be given at least a one-step increase, he was paid \$3575, the second step-rate in grade GS-6 under the old schedule. Under the new scales, the corresponding pay steps are now \$3660, GS-5, and \$3920, GS-6. The requirement is met under the new rates if the employee is promoted from the third rate in GS-5, \$3660 to the minimum rate of GS-6, \$3795, with an increase of \$135.00. If the Agency required to amend the section retroactively to give the employee the first rate of GS-6, or does he continue to receive the second rate of GS-6, at the new rate?"

Answer: "The retroactive provision of the new act (Public Law 201) has the effect of requiring the adjustment of an employee's compensation for the period between its effective date and enactment date to reflect the pay status he would have attained had the amended pay schedules been operative and applied currently during the said periods In the case illustrated it is clear that, if the new schedules had been applied currently, the employee, on being promoted to grade GS-6 from the third rate of grade GS-5, would have been placed in the minimum rate of the new grade. Accordingly, and since the act speaks from the first day of

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the first pay period after 30 June 1951, in the interest of consistency and a uniform application of its provisions, it is required that adjustments be made in such cases to reflect the true salary status of each employee under the amended schedules. In the example given, the action taken to promote the employee to grade GS-6 should be amended retroactively to give him the minimum rate of the grade (GS-6) . . ."

3. The circumstances under which possible overpayment could occur for Agency promotions processed effective between 8 July 1951, and 25 October 1951, are as follows:

FROM	TO Erroneous Adjustment	TO Adjustment Required
GS-4 (6th pay step)\$3275	GS-5 (4th pay step)\$3475 pay adjusted to \$3785	GS-5 (3rd pay step)\$3660
GS-5 (3rd pay step)\$3350	GS-6 (2nd pay step)\$3575 pay adjusted to \$3920	GS-6 (1st pay step)\$3795
GS-5 (4th pay step)\$3475	GS-6 (3rd pay step)\$3700 pay adjusted to \$4045	GS-6 (1st pay step)\$3920
GS-5 (5th pay step)\$3600	GS-6 (4th pay step)\$3825 pay adjusted to \$4170	GS-6 (3rd pay step)\$4045
GS-5 (6th pay step)\$3725	GS-6 (5th pay step)\$3950 pay adjusted to \$4295	GS-6 (4th pay step)\$4170
GS-5 (7th pay step)\$3850	GS-6 (6th pay step)\$4075 pay adjusted to \$4420	GS-6 (5th pay step)\$4295
GS-5 (6th pay step)\$3725	GS-7 (2nd pay step)\$3950 pay adjusted to \$4330	GS-7 (1st pay step)\$4205
GS-5 (7th pay step)\$3850	GS-7 (3rd pay step)\$4075 pay adjusted to \$4455	GS-7 (2nd pay step)\$4330
GS-8 (7th pay step)\$4950	GS-10 (2nd pay step)\$5125 pay adjusted to \$5625	GS-10 (1st pay step)\$5500
GS-9 (7th pay step)\$5350	GS-11 (2nd pay step)\$5600 pay adjusted to \$6140	GS-11 (1st pay step)\$5940
GS-10 (5th pay step)\$5500	GS-11 (3rd pay step)\$5800 pay adjusted to \$6340	GS-11 (2nd pay step)\$6140
CPC-5 (7th pay step)\$3154	CPC-7 (3rd pay step)\$3325 pay adjusted to \$3635	CPC-7 (2nd pay step)\$3535*
CPC-7 (3rd pay step)\$3325	CPC-8 (2nd pay step)\$3525 pay adjusted to \$3865	CPC-8 (1st pay step)\$3740*

*Wage Board conversions, made subsequent to promotions at these levels, must also be adjusted accordingly.

C O P Y

4. It is requested that a review be made of all promotion actions processed during the period of 8 July 1951, and 25 October 1951, and action be initiated by your Office to correct any inconsistencies in pay not compatible with the above referenced Comptroller General's decision.

GEORGE E. MELOON

CWD/RWS:nf

Distribution:

- 3 - Chief, Classification & Wage Division (Room 1014 Eye Bldg.)
- 1 - Chief, Research & Planning Staff, Personnel Office (Room 209 No. Bldg.)
- 1 - Chief, Fiscal Division, Finance Office (Room 1601 Eye Bldg.)
- 1 - Chief, Finance Division, Finance Office (Room 2210 Eye Bldg.)

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General Counsel

12 January 1953

Personnel Director

Salary Adjustments from Retroactive Pay Increases

REFERENCES: P.L. 201, 82nd Congress, 1st Session, dated October 24, 1951
P.L. 375, 82nd Congress, 2nd Session, dated June 5, 1952
Comptroller General (B-106337), dated November 6, 1951

1. This office desires an opinion whether the requirement for salary adjustments as prescribed in Comptroller General Decision (B-106337) is obligatory on the CIA. Presumably, the Decision is applicable to the Agency unless its specific terms of application are not binding.

2. Salary increases were accorded CIA personnel by administrative decision. The authority for making retroactive payments to Agency personnel for the period between the effective date of P.L. 201 and the date on which salary increases were made effective in the Agency was subsequently obtained from Congress (P.L. 375) and the back sums were paid. P.L. 375 apparently does not mandate that retroactive payments be made on the basis as those provided to classified employees under P.L. 201. The law states that pay increases may be made retroactively effective on the same basis as if they had been authorized by said law. Therefore, the provision might be construed to be permissive, not obligatory, on the Agency. It could be argued that the Comptroller General Decision (B-106337) has applicability to the CIA only to the extent that its restrictive effects were accepted as policy by this Agency.

3. The Decision of the Comptroller General is in accordance with the requirements of Sec. 802(b) of the Classification Act of 1949, and the CSC Regulation (Sec. 25 104(a)). The Act and Regulation provide that any person who is promoted or transferred to a position in a higher grade shall receive basic compensation at the lowest rate of such higher grade which exceeds his existing rate by not less than one step increase of the grade from which he is promoted or transferred. It is recognized, however, that the policy of the CIA to adhere to the Classification Act insofar as possible is a voluntary policy subject to such adherence or non-conformance as the Director of Central Intelligence may deem necessary and appropriate. Moreover, Agency promotion policy is administratively determined and is not bound by the requirement of Sec. 802(b) of the Classification Act of 1949.

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4. The applicability of de facto cases may deserve consideration relative to CIA personnel. The Comptroller General in a Decision dated January 25, 1952 (B-101721) asserted, "It is well settled that a person discharging the duties of an office under color of authority is entitled to retain the pay received by him in good faith as an officer de facto. U. S. vs. Royer, 268 U. S. 394. Following that decision this Office has regarded the right of a person to retain the pay of an officer de facto as conditional upon his good faith in discharging the duties of the office". Unlike those personnel retroactively paid under the provisions of P.L. 201, employees of the CIA were not granted retroactive payments for approximately nine months after the initial pay increase. This circumstance lends credence to the good faith in which the individuals held the positions to which they were promoted. In a Decision dated March 14, 1949 (B-82805), the Comptroller General said, in regard to a promotion action later determined to be in error by Civil Service Commission audit, that where there is an unauthorized personnel action and there is no evidence of bad faith or fraud either on the part of the employee or the administrative officials involved, the employee may be permitted to retain compensation received by him prior to the time such error was brought to the attention of the administrative officers. The Decision took cognizance of the necessary delay between the date of the personnel action and the time of audit.

5. An opinion is requested whether it is necessary to require repayment of amounts considered as over-payments under the terms of the Comptroller General Decision (B-106337), and, additionally, whether the repayment can be waived without the necessity for obtaining the opinion of the Comptroller General or revising CIA policy pertaining to the group of personnel affected.

GEORGE E. MELOON
Personnel Director

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Personnel Director

(C O P Y)

2 February 1953

Office of the General Counsel

Salary Adjustments from Retroactive Pay Increases

REFERENCE: Your Memorandum dated 12 January 1953, same subject.

1. The reference requests the advice of this office whether procedures for salary adjustments prescribed in the decision of the Comptroller General (B-106337) of November 6, 1951, 31 Comp. Gen. 166, should mandatorily be adhered to by this Agency in making retroactive payments pursuant to the general provisions of Public Law 375 - 82nd Congress.

2. It has been informally ascertained that your inquiry is prompted by the fact that certain adjustments made pursuant to Public Law 375, in cases where promotions occurred during the period of retroactivity, involve overpayments in the light of the cited Comptroller General decision. You further wish to be advised whether it is required that collection of these overpayments be obtained.

3. It is the opinion of this office for the reasons hereafter set forth that retroactive payments not made in conformance with the cited decision are improper and that excessive amounts paid in each case should be recovered.

4. The Director of Central Intelligence was advised by the Comptroller General in Decision B-106516 of November 21, 1951, 31 Comp. Gen. 191, that the extraordinary powers conferred upon CIA by Section 10 of the Central Intelligence Agency Act of 1949 did not include the authority to pay the Agency's employees not under the Classification Act of 1949 retroactive increases in compensation equivalent to those authorized to be paid employees in the classified Civil Service. Accordingly, this Agency and others were precluded from making retroactive adjustments in salary until the passage of Public Law 375 on June 5, 1952.

5. Public Law 375, as you state, permitted this Agency to pay its employees "pay increases, comparable to those provided by Public Law 201," "on the same basis as if they had been authorized by said law....". We interpret the words "on the same basis" as meaning that retroactive payments could be made in as favorable a manner as under Public Law 201. Without express terminology to this effect, payments on a more favorable basis.

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6. The rule is well established in Government that increases in compensation lawfully may not be granted by administrative determination to have retroactive effect. 31 Comp. Gen. 163, 164; 28 id. 300; 25 id. 601. The Comptroller General made it abundantly clear in his opinion to the Director of Central Intelligence, cited above, that the unique authorities of this Agency were not intended to permit:

"a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency.... To adopt the view suggested in your letter (that retroactive payments could be made under the broad authority of Section 10 of Public Law 110) would be equivalent to concluding that your Agency is authorized to grant retroactive increases, bonuses, or other perquisites to any or all of its employees with such frequency, or at such times, as desired, contingent only on the availability of funds. I cannot attribute any such intention to the Congress." 31 Comp. Gen. 191, 193.

To say that Public Law 375 and the decision of November 6, 1951 have no restrictive effect upon this Agency is tantamount to making the contention refuted by the Comptroller General in the quoted passage.

7. Furthermore, it is our opinion that the Comptroller General's decision of January 25, 1952 referred to in paragraph 4 of your memorandum, is clearly distinguishable on its facts. The case of the "de facto" officer there considered, involved an Army Air Force Captain who continued to receive the pay and allowances and perform the duties of a higher grade after his temporary promotion to that grade had expired. The question of retroactive increases in salary was not in issue. It cannot be said here that Agency employees promoted during the period of retroactivity performed the services of their promoted grade during that entire period.

8. For the reasons stated, payments in excess of those permitted under the Comptroller General's interpretation of Public Law 201 are retroactive payments not expressly authorized by law and hence are subject to audit exception. We therefore believe that it is necessary to require repayments of amounts considered as such overpayments. A revision of Agency policy purporting to waive this requirement would be legally objectionable.

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24 February 1953

Chief, PD(O) and Chief, PD(C)

Personnel Director

Overpayments Resulting from Retroactive Application of Public Law 201

1. Reference is made to my memorandum dated 5 September 1952 in which you were advised that certain promotion actions effected between 8 July and 25 October 1951 might require adjustment in basic salary rates involving refunds on the part of employees concerned.

2. Personnel Division (Overt) has informally reported three such cases. As a result of this finding, inquiry was initiated to determine whether there was any appropriate basis for seeking a decision from the Comptroller General which would be favorable to these employees. The General Counsel replied in the negative.

3. It is therefore requested that each personnel action processed by your office during the period indicated, be checked for additional cases which will require refund and a report of this review submitted to this office by 4 March 1953.

GEORGE E. MELOON

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